

the full punishment authorised by law for the offence of which such person has been convicted and shall record his reason for so doing. Presumably the learned Magistrate now wants me to deal with this case under section 52(2) of the Courts Ordinance, 1948.

In this case the record does not show that the court ascertained that the accused understood the nature and consequences of his plea and intended to admit, without qualification, the offence alleged against him. There is also no record that his plea was accepted by the learned Magistrate before recording a conviction. I invite the attention of all Presidents and Magistrates to the provisions of section 173(b) of the Criminal Procedure Code.

I would suggest that the following procedure be adopted. Before a case is presented in court the prosecution must first satisfy itself whether the maximum punishment which such court can impose is adequate. If it thinks that such sentence is inadequate the case should be brought before another court. Ordinarily a case should be brought before the court which has jurisdiction to try it. For example, a case which is ordinarily triable in a Magistrate's Court should be brought in that court and should only be brought in the Sessions Court if the prosecution is of the opinion that upon conviction the maximum sentence which can be imposed by the Magistrate is inadequate. The provisions of section 87(2) of the Courts Ordinance, 1948 should only be invoked when the case takes an unexpected turn and the evidence so adduced shows that the maximum sentence that can be imposed by the trial Magistrate is inadequate.

In exercise of my powers under section 325(i) of the Criminal Procedure Code, I alter the sentence of the Magistrate to that of 12 months' imprisonment.

Order accordingly.

SOHAN SINGH v. GARDNER & ANOR.

[O. C. J. (Buttrose J.) October 6, 1962]

[Singapore — Suit No. 1292 of 1959]

Moneylending — Outstanding accounts — Collection of, by ex-moneylender — Suit started before new Ordinance came into force — Whether amounting to carrying on business of moneylending under Moneylenders Ordinance, 1959 — Interpretation and General Clauses Ordinance (Cap. 2), s.14.

Contract — Contract between lender and borrower — Allegation of fraud — Onus of proof.

In this action the plaintiff who described himself as an ex-moneylender, claimed against the defendants for the sum of \$6,776.19, being the balance of principal and interest due under two promissory notes dated August 29, 1957 and March 28, 1958 and made by the defendants jointly and severally in favour of the plaintiff.

The plaintiff was a moneylender under the Moneylenders Ordinance (Cap. 193) which was repealed by the

A present Ordinance which came into operation on September 11, 1959. The present proceedings were commenced on September 4, 1959, one week prior to the new Ordinance coming into force.

The plaintiff maintained that he had ceased to be a moneylender as from September 10, 1959, but had merely endeavoured to collect outstanding accounts after that date and had not entered into any new agreements for loans to borrowers.

B The defendants contended, on the other hand, that notwithstanding that plaintiff had not lent any money after the coming into force of the new Ordinance, by continuing to collect his outstanding accounts on or after September 11, 1959, he was carrying on the business of a moneylender and the provisions of the new Ordinance applied to him. They maintained he could not seek to recover his money without taking out a licence.

C Held: (1) the new Moneylenders Ordinance, 1959, should be construed so as not to interfere or to interfere as little as possible with the rights of the parties as they existed at the time of its passing. Where the action was pending at the time clear and definite words are necessary to alter those rights. Section 14 of the Interpretation and General Clauses Ordinance is in point and to the like effect;

D (2) the plaintiff is not a moneylender within the meaning of the Moneylenders Ordinance, 1959.

There were also some difficult issues of fact. The substantial questions which arose to be considered by the Court were as to what was the real contract between the parties and whether it was truly and fully set out in the promissory notes, whether copies of notes were given to the defendants and whether the notes had been discharged by payment in full.

E The defendant pleaded fraud and alleged that the promissory notes themselves did not correctly set out either the agreement reached, the amounts of the loans or the interest payable.

F Held: the defendants by their signature to the promissory notes and the acknowledgments attached to them had acknowledged receipt jointly of the monies lent and the onus was therefore upon them to show that these did not set out the terms of the real contract. Furthermore, they had alleged fraud which must not only be pleaded with utmost particularity but must be clearly and distinctly proved. This the defendants had failed to do.

Cases referred to:—

- G (1) *Pandey v. Stephen* [1960] M.L.J. 69.
- (2) *Tara Singh v. Ho Nuet Hong* [1961] M.L.J. 278.
- (3) *Bachan Singh v. Kulasingah* [1962] M.L.J. 22.
- (4) *Surain Singh v. Yatim Eusope* [1962] M.L.J. 223.

ACTION.

H K. K. Bezboruah for the plaintiff.
H. E. Cashin for the defendants.

Cur. Adv. Vult.

Buttrose J.: In this action the plaintiff, who described himself as an ex-moneylender, claims against the defendants for the sum of \$6,776.19, being the balance of principal and interest due under two promissory notes for \$2,200 dated the 29th August, 1957, and \$3,750 dated the 28th March, 1958, respectively and made by the defendants jointly and severally in favour of the plaintiff.

The plaintiff's case was that the amounts stated in the promissory notes were actually

lent and that in respect of the first promissory note \$1,200 had been paid off the principal and \$340 off the interest, while on the second promissory note only a sum of \$1,250 had been paid off the interest.

The defendants' case was that only \$1,000 was lent in respect of the first promissory note and that the plaintiff agreed to accept either a lump sum repayment of \$1,500 or repayment by seven instalments of \$300 per month including both principal and interest in each case. They maintained that they had paid the plaintiff in full on the instalment basis. With regard to the second promissory note the defendants alleged that only \$500 was lent and at the time the loan was made the plaintiff informed them that only the interest in respect of the first loan had been paid and that together with the second loan of \$500 the principal that would then be due would be \$2,000. The defendants say that the plaintiff agreed to accept a lump sum repayment of \$2,000 or repayment by fifteen instalments of \$250 a month to include both principal and interest in each case. They maintained that they had paid the plaintiff in full on the instalment basis in respect of this loan also.

The defendants pleaded fraud and alleged that the promissory notes themselves did not correctly set out either the agreements reached, the amounts of the loans or the interest payable. They denied that copies of the promissory notes authenticated by the plaintiff were delivered to them before the money was lent or at all. They further denied that the plaintiff had ceased to be a moneylender and maintained that he was at all material times and still is a moneylender. The defendants rely on section 15 of the Moneylenders Ordinance, 1959 (No. 58 of 1959), hereinafter referred to as 'the new Ordinance', in that the plaintiff, being a moneylender, is not registered under the new Ordinance and therefore the claim is unenforceable. They also rely on sections 22 and 23 of the new Ordinance and say that the interest charged in respect of the sums actually lent is excessive and the transaction is harsh and unconscionable and substantially unfair and that such excess of interest be repaid to them. The defendants counterclaim that an account be taken and that the plaintiff repay to them such excess of interest.

The position was that the plaintiff was a moneylender under the Moneylenders Ordinance (Chapter 193), hereinafter referred to as 'the old Ordinance', which was repealed by the new Ordinance which came into operation on the 11th September, 1959. The present proceedings were commenced on the 4th September, 1959, one week prior to the new Ordinance coming into force. Not only therefore were the loans in question in the present suit made before the coming into operation of the new Ordinance but the cause of action had already arisen and proceedings had been taken.

The plaintiff maintained that he had ceased to be a moneylender as from the 10th September, 1959, but had merely endeavoured to collect outstanding accounts after that date and had not entered into any new agreements for loans to borrowers.

The defendants contended, on the other hand, that notwithstanding that the plaintiff had not lent any money after the coming into force of the new Ordinance by continuing to collect his outstanding accounts on and after the 11th September, 1959, he was carrying on the business of a moneylender and the provisions of the new Ordinance apply to him. In other words, that he could not seek to recover his money without taking out a licence.

In *Pandey v. Stephen* ⁽¹⁾, Rose C.J. held that a person who has ceased to carry on the business of a moneylender before the coming into operation of the new Ordinance is not debarred from recovering what is due on his moneylending contracts by reason of the fact that he has not elected to take out a licence under section 5 of the new Ordinance. I myself expressed similar views on the subject in *Tara Singh v. Ho Nuet Hong* ⁽²⁾.

There does, however, appear to be some confusion over the application of either the old or the new Ordinance in the light of certain decisions to which I was referred, namely, the unreported decision of Tan J. in Suit No. 372 of 1959, the decision of Ambrose J. in *Bachan Singh v. Kulasingah* ⁽³⁾ and the decision of Wee Chong Jin J. in *Surain Singh v. Yatim Eusope* ⁽⁴⁾.

In *Pandey v. Stephen*, *supra*, at p. 70 the learned Chief Justice referred to the general principle of construction stated in *Maxwell's Interpretation of Statutes* 10th Ed. at p. 221 that in general when the law is altered during the pendency of an action the rights of the parties are decided according to the law as it existed when the action was begun unless the new statute shows a clear intention to vary such rights and such intention may, of course, be by implication. There is, in my opinion, no such necessary implication here.

The new Ordinance should, in my view, be construed so as not to interfere or to interfere little as possible with the rights of the parties as they existed at the time of its passing. Where, as here, the action was pending at the time clear and definite words are necessary to alter those rights. Section 14 of the Interpretation and General Clauses Ordinance is in point and to the like effect.

It was urged upon me that although the plaintiff had not lent any money since the 11th September, 1959, yet because he had merely taken steps to collect his outstanding accounts after that date that was tantamount to carrying on the business of moneylending. I agree with Rose C.J.'s view expressed in *Pandey v. Stephen*, *supra*, that that is a highly artificial view of the position and in the absence of any other evidence that

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the plaintiff was a moneylender after the relevant date I am not prepared to accept the proposition. In my view, the plaintiff is not a moneylender within the meaning of the new Ordinance.

I now turn to deal briefly with the difficult issues of fact.

The substantial questions which arise to be considered are as to what was the real contract between the parties and is it truly and fully set out in the promissory notes, whether copies of the notes were given to the defendants and, whether the notes have been discharged by payment in full.

The oral evidence material to these issues was that of the plaintiff and two of his witnesses, Punna Singh and Sadhoo Singh on the one hand and the two defendants on the other. Their versions as to the negotiations which preceded each loan and the acts of the parties at the time of the transaction differed widely and there was a sharp conflict of evidence. While they were in the witness box I observed them carefully but I was not able, speaking generally, to come to any definite conclusion from their demeanour as to which of them was lying and which was truthful. They came with their evidence well prepared and very little effect, if any, was made on them in cross-examination. The only matter which drew my attention and which calls for any comment was the complete composure and lack of emotion on the part of both defendants when giving their evidence. In view of the blatant and scandalous fraud of which they maintained the plaintiff was guilty, I found their attitude surprising. One would have expected some signs of emotion and anger at this barefaced swindle of which they were the objects even after so long a lapse of time. I do not attach undue importance to the matter as personality and temperament are factors which must be taken into consideration, but I feel bound to say that their matter-of-fact calm left me with a sense of unreality. Particularly, was this so in the case of the 2nd defendant.

My findings of fact, therefore, are based to a large extent on the onus of proof, the probabilities of the case and the inferences to be drawn from the documents.

Now, the defendants are bound by their pleadings but their evidence, in my view, does not support them. It is clear on the evidence that all the details on the promissory notes were not entered thereon before the arrival of the defendants and they now admit this. The 1st defendant did have an opportunity to and did read the promissory notes and filled in the actual amount in words and figures in the acknowledgment on the first note and wrote everything which appears in green ink on the second note with the exception of the 2nd defendant's signature. In his answers to interrogatories the 1st defendant affirmed that none of the details on the notes were entered by him.

A The 1st defendant was far from ignorant of moneylending matters as alleged in his pleadings. It was established that he had had four moneylending transactions with one Amar Singh, a moneylender, who was called by the plaintiff, three of them in 1955 and one in November, 1957, some three months after the defendants had taken the first loan from the plaintiff. It was in connection with the loan in November, 1957, that Amar Singh took legal proceedings against the 1st defendant in the District Court to recover the amount of the loan. The matter was eventually settled. The 1st defendant endeavoured to weaken the effect of this evidence, which he admitted, by showing that the loans from Amar Singh were all transacted on a friendly basis because of his association with Amar Singh's son. I have no doubt whatever that the 1st defendant was fully aware of what a moneylending transaction entailed and of its implications.

D Now, the defendants by their signatures to the promissory notes and the acknowledgments attached to them have acknowledged receipt jointly of the monies lent and the onus is therefore upon them to show that these do not set out the terms of the real contract. Furthermore, they have alleged fraud which must not only be pleaded with the utmost particularity but must be clearly and distinctly proved. This, in my view, they have failed to do.

F It is inconceivable that the defendants would have taken a further loan of \$500 from the plaintiff if, as they assert, they knew he had swindled them in connection with the first. They were prepared apparently to enter into the second transaction with the full knowledge that the plaintiff had perpetrated a palpable fraud on them and were still prepared to trust him. The 1st defendant continued to make repayments without obtaining receipts and without keeping any record which could be produced of the payments made.

G I think this is inherently improbable and I am unable to accept the evidence of the defendants on this matter or as to the repayments which they allege they made and I accept the plaintiff's evidence on this subject.

H I also accept the plaintiff's account of how the promissory notes came to be signed and find as a fact that they were executed in the plaintiff's office at 140 Owen Road and not in the 1st defendant's car. The defendants maintained that the notes were signed on the top of the back of the front seat of the car on a petrol book or piece of cardboard or something with the aid of a small dim light at the rear of the car. I found their evidence on this point vague and unsatisfactory. A perusal of the promissory notes supports, in my opinion, the plaintiff's version. The general form and manner of the writing is more consistent with it being written at a desk than under the conditions contended for by the defendants.

Counsel for the defendants invited me to draw the inference that the plaintiff's books of account were not properly kept under the Ordinance and if that were so, he must be doing it for a purpose. I have examined the plaintiff's account books and it is true that a number of loans have not been paid off. It is also true that on the occasions when they were paid off they were in some instances settled by a substantial lump sum payment.

On these facts alone I am not prepared to infer that the plaintiff's books of account were not properly kept nor am I prepared to say that there has not been a proper allocation to principal and interest.

I find that copies of the notes were handed to the defendants before the money was lent. It was urged upon me by Mr. Cashin that in all these moneylending cases never yet has a defendant been able to produce a copy of the promissory note which he has signed and that I should infer in this case that they were not given to the defendants. On the other hand, for a defendant to produce a copy of the note would be to destroy one of the stock defences which is always raised in these cases and I would have been very surprised indeed if the defendants in this case had done so.

In the result therefore the defence fails on all points and the plaintiff is entitled to judgment.

Before fixing the amount I am, as I intimated during the argument, prepared to hear counsel on the question of interest.

After argument, interest is agreed at 20 per centum per annum from the date of the loans until judgment.

Judgment for the plaintiff for \$6,895.96 and costs. The counterclaim is dismissed. Stay of execution both as to judgment debt and costs provided:—

(a) that the defendants file a notice of appeal within 21 days from the date hereof and if they do so, stay to remain in force until determination of the appeal;

(b) that the defendants pay into Court within 21 days from the date hereof the sum of \$1,500, being as to \$500 the usual security for costs of the appeal and as to \$1,000 additional security;

(c) the 1st defendant's passport to be deposited with the Registrar forthwith.

Liberty to apply.

Order accordingly.

Solicitors: K. K. Bezboruah; Rodyk & Davidson.

CHIN SHAK LEN v. LIN FAH

[O. C. J. (Gill J.) October 9, 1962]

[K.L. — Originating Summons No. 1689 of 1962]

Husband and Wife — Matrimonial home registered in name of husband — Wife providing part of money — Resulting trust — Married Women's Ordinance, 1957, s.11 — Land Code (Cap. 138), s.240.

Married Women — Deserted wife — No interest, legal or equitable or equity in matrimonial home — Land Code (Cap. 138), s.42.

In 1951, the respondent, the husband of the applicant, bought a 1/3rd share in a piece of land in Kajang, for \$1,600, the greater part of which, \$1,200, was provided by the wife, and became the registered proprietor together with two other purchasers.

In 1955 the husband deserted the wife who continued staying on the said land. From 1951 to 1959 the respondent sold the greater part of his share to various purchasers.

In an application by the wife under section 11 of the Married Women's Ordinance, 1957 for the determination of certain questions concerning the title to or possession of property,

Held: the wife is entitled to the share registered in the husband's name on a resulting trust, there being no presumption of advancement where a wife provides money for the purchase of property in the husband's name.

Semble, a deserted wife has no interest, legal or equitable, or equity in the matrimonial home, following *Dickson v. McWhinnie* (6).

Cases referred to:—

- (1) *Cook v. Cook* [1962] P. 181.
- (2) *Bull v. Bull* [1955] Q.B. 234.
- (3) *Allcard v. Skinner* (1887), 36 Ch. D. 145.
- (4) *Shakespear v. Atkinson* [1955] N.Z.L.R. 1011.
- (5) *Cockrane v. Kneebone* [1957] N.Z.L.R. 456.
- (6) *Dickson v. McWhinnie* [1958] S.R. (N.S.W.) 179.
- (7) *Thompson v. Earthy* [1951] 2 K.B. 596; noted 25 A.L.J. 694.
- (8) *Hine v. Hine* [1962] 3 All E.R. 346.

ORIGINATING SUMMONS.

Chan Sek Keong for the applicant.

Kam Woon Wah for the respondent.

Cur. Adv. Vult.

Gill J.: These proceedings have been commenced by way of summons under section 11 of the Married Women's Ordinance, 1957 for the determination in a summary way of a question between a wife (the applicant) and her husband (the respondent) as to the title to or possession of an undivided interest in the land held under Certificate of Title No. 10075 for Lot 71, section 11 in the Town of Kajang, together with a building thereon known as No. 164, Reko Road, Kajang.

It is common ground that the wife provided a sum of \$1,200 and the husband put in \$400 of his own money for the purchase of this undivided interest in the said land in March 1951 and that the husband obtained registration of title in his own name. The only controversy between the parties is that whereas the wife says that she